

## REMARKS

Claims 1-66 have been cancelled without prejudice; Applicants reserve the right to prosecute claims to the subject matter of canceled claims 6, 9, 12-21, 26-32, 39, 40 and 47-66 in a future application. New claims 67-91 have replaced prior claims 1-5, 7-8, 10-11, 22-25, 33-38 and 41-46. New claims 75 and 79, which replace claims 11 and 25, are written to be consistent with the restricted scope of new claim 67. None of the amendments made herein constitutes the addition of new matter.

### The Requirement for Election/Restriction

The Patent Office has required restriction under 35 U.S.C. 121 and 372, alleging that the specification defines 16 different inventions as follows:

- Group I: Claims 1-5, 7-8, 10-11, 33-38, and 41-46, drawn to an isolated nucleic acid molecule as set forth in SEQ ID NO:1 or the protein-encoding regions thereof or a degenerate nucleotide sequence thereto, a probe or primer from said nucleotide sequence, a plant or progeny or propagule thereof, carrying said nucleic acid molecule as an exogenous complement of its genome, a gene construct or vector comprising said nucleic acid molecule; a method of modifying the starch content and/or starch composition of one or more tissues or organs of a plant, comprising expressing in said plant said nucleic acid molecule
- II. Claims 1-5, 7-8, 10-11, 33-38, and 41-46, drawn as above with reference to SEQ ID NO:3.

- III. Claims 1-5, 7-8, 10-11, 33-38 and 41-46, drawn as above with reference to SEQ ID NO:5.
- IV. Claims 1-4, 6-7, 9-11, 33-38 and 41-46, drawn as above with reference to SEQ ID NO:7, 9, 11-16 and 38.
- V. Claims 1-5, 7, 10-11, 33-38 and 41-46, drawn as above with reference to SEQ ID NO:37.
- VI. Claims 12-16, 18-19 and 21, drawn to an isolated or recombinant polypeptide comprising SEQ ID NO:2.
- VII. Claims 12-16, 18-19 and 21, drawn to an isolated or recombinant polypeptide comprising SEQ ID NO:4
- VIII. Claims 12-16, 18-19 and 21, drawn to an isolated or recombinant polypeptide comprising SEQ ID NO:6.
- IX. Claims 12-16, 18-19 and 21, drawn to an isolated or recombinant polypeptide comprising SEQ ID NO:8 or 10.
- X. Claims 22-27, drawn to a method comprising hybridizing nucleic acid, and a method for assaying for the presence or absence of wheat starch synthase in a plant.

- XI. Claims 22-25 and 28-32, drawn to a method comprising hybridizing nucleic acid, and a method for marker-assisted plant breeding or selection.
- XII. Claims 39-40, drawn to an isolated promoter sequence comprising nucleotides 1-287 of SEQ ID NO:11.
- XIII. Claims 39-40, drawn to an isolated promoter sequence comprising nucleotides 1-1416 of SEQ ID NO:37.
- XIV. Claims 39-40, drawn to an isolated promoter sequence comprising nucleotides 1-973 of SEQ ID NO:38.
- XV. Claims 47-53 and 60-62, drawn to a modified starch and a food product containing same.
- XVI. Claims 54-59 and 63-66, drawn to a modified protein and a non-food product comprising same.

The Examiner has alleged that the inventions are distinct each from the other, because they lack the same or corresponding special technical features.

Applicants elect, with traverse, the invention of Group II, namely claims 1-5, 7, 8, 10, 11, 33-38 and 41-46, which relate generally to an isolated nucleic acid molecule set forth in SEQ ID NO: 3, for examination in the instant application.

Claim 1 has been replaced by new claim 67, which is directed to an isolated nucleic acid molecule having a sequence selected from the sequence having at least 85% identity to the sequence of the protein encoding region of SEQ ID NO: 3, a nucleotide sequence encoding a polypeptide having at least 85% identity to the amino acid sequence of SEQ ID NO: 4, or a nucleotide sequence complementary to these sequences. Support for this claim is to be found in prior claim 1 and throughout the description. See, for example, page 10, lines 28-31, which discloses a nucleic acid molecule comprising a sequence of nucleotides which encodes a polypeptide having at least 85% identity to the sequence of SEQ ID NO: 4, the polypeptide encoded by SEQ ID NO: 3 (see page 59, lines 1-3). Those claims which depend from claim 1 have been canceled and replaced with new claims which depend from new claim 67. New claims 67 - 75 and 79 - 91 correspond to the claims of Group II.

Applicants respectfully request rejoinder of the claims of Group 22-25 (Group X), canceled without prejudice and replaced with new claims 76 - 78, because these claims share the special technical feature of new claim 67. New claims 76 - 78 are written to have the same scope as new claim 67.

#### Conclusion

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.


If there are any outstanding issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

Application. No. 10/018,418  
Amendment dated January 20, 2004  
Reply to Office Action of October 16, 2003

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This response is accompanied by a Petition for Extension of Time (three months) and a check in the amount of \$950.00 as required by 37 C.F.R. 1.17(c). It is believed that this response with amendment does not necessitate the payment of any additional fees under 37 C.F.R. 1.16-1.17. If this is incorrect, however, please grant a petition for the necessary extension of time and charge any fees due under the foregoing Rules to Deposit Account No. 07-1969.

Respectfully submitted,



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